IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.526 of 2006

Mangilal .. Petitioner (Defendant)

vs.

Sri Vengeeswarar Alagar Perumal and
Nagathamman Koil Devasthanam rep.
by its Hereditary Trustee G.Prem Anand
Saidapet Road, Vadapalani
Chennai.600 026. .. Respondent (Plaintiff)

Revision Petition filed against the order dated 27.4.2005, made in I.A.No.2485/2005 in O.S.No.4258/1997, on the file of the V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.Amarchand
For Respondent : Mr.P.Duraisamy

ORDER:

This Revision Petition has been filed under Sec.115 of the Code of Civil Procedure against the order dated 27.4.2005 passed by the learned V Assistant Judge, City Civil Court, Chennai, in I.A.No.2485/2005 in O.S.No.4258/1997.

2. The Revision Petitioner filed I.A.No.2485/2005 to condone the delay of 365 days in filing the petition to set aside the exparte decree dated 29.12.2003 in O.S.No.4258/1997. The only reason given by the Revision Petitioner in the affidavit filed in support of the above petition is that due to old age, sickness, poor eyesight, deafness, knee pain, etc., he was not able to move out of his house without an escort and meeting his advocate was delayed due to the aforesaid reasons. The V Assistant City Civil Judge did not accept the reasons given by the petitioner as no medical certificate was produced to substantiate the alleged sickness. Therefore he dismissed the application filed to condone the delay of 365 days. Aggrieved by the said order dated 27.4.2005, the Revision Petitioner has filed the above Revision Petition.

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3. Heard the learned counsel for the petitioner as well as the learned counsel for the caveator. I have also perused the documents filed in support of their submissions.

4. Learned counsel for the petitioner has relied on the Division Bench judgment of this court reported in 2005(2) CTC 766 (Mohammed Aslam v. C.N.A.Gowdhaman).

5. In every case of delay it is always some lapses on the part of the litigant and that does not mean that lapse is deliberate and intentional. The Division Bench of this court in the above judgment has categorically held in para 12 as follows:-

> "12. In the impugned order, as said earlier, the learned Judge has not considered the explanation offered by the applicant for the delay of 1251 days. Though the learned Judge was conscious of the fact that by condoning the inordinate delay, the respondents therein (appellants herein) will be put to great hardship, instead of compensating them, directed for the payment of Rs.10,000 to the State Legal Services Authority, Chennai, admittedly, which is not a party in this proceedings. We are unable to share the above view. Having found that by condoning the inordinate delay only on the ground that the applicant should be given an opportunity and having found that the said act will cause great hardship to other side, viz., respondents therein, it is but proper to compensate them by awarding reasonable costs to them. The learned Judge has not resorted to such recourse. It is not in dispute that the Courts are here to render justice to both parties. We are unable to understand how the respondents will be compensated by payment of Rs.10,000 to the State Legal Services Authority, Chennai. Equally, we are conscious of the fact that the length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation therefor is satisfactory. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack the mala fides or it is not put forth as part of a dilatory strategy, the Court

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must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should not lean towards acceptance of the explanation. We are also aware that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. Now, even the higher Court of this land have interpreted that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Accordingly, in order to give one opportunity to the respondent/applicant and at the same time, to compensate the appellants/respondents, we intend to modify the order of the learned Judge dated 10.3.2005. Though it is stated that the applicant had paid a sum of Rs.10,000 to the State Legal Services Authority, Chennai as ordered, in addition to the said amount, the applicant/respondent is directed to pay a further sum of Rs.20,000 (Rupees twenty thousand only) to the appellants/respondents within 15 days from today, failing which the order of the learned Judge dated 10.3.2005 shall stand set aside. OSA No.44 of 2005 is disposed of accordingly."

6. In the light of the above pronouncement, if the facts of the present case are gone into, I am of the opinion that the delay of 365 days should be condoned to permit the Revision Petitioner to contest the suit on merits. At the same time, I am aware that the respondent herein is also to be adequately compensated for the hardship caused to them.

7. Hence I am directing the Revision Petitioner herein to pay a sum of Rs.2,000/- to the respondent directly towards cost within four weeks from the date of receipt of copy of this order. On such payment being made, the trial court is directed to dispose of the application for setting aside the exparte decree, on merits within two weeks thereafter.

8. With this above direction, the above Civil Revision Petition is allowed. No costs. C.M.P.No.3941/2006 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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sks

To

1. The V Assistant Judge,
City Civil Court, Chennai.
(Records if any)

2. The Registrar,
City Civil Court, Chennai.104

1 cc To Mr.K.Amarchand, Advocate, SR.25156.
1 cc To Mr.P.Duraisamy, Advocate, SR.25171.

C.R.P.(NPD)526/06.

VC(CO)
RVL 23.06.2006

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